

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 222

SPONSOR: Criminal Justice Committee and Senator Crist

SUBJECT: Service of Process

DATE: December 11, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Section 1 of the CS amends s. 48.031, F.S., to allow witness subpoenas in criminal traffic cases, misdemeanor cases, and second or third degree felony cases to be served by any form of United States mail. However, failure of a witness to appear may not be the basis of a contempt of court finding if the mailing was not certified. The section also permits the posting of any criminal witness subpoena after three unsuccessful attempts on different dates and times of day to serve the subpoena at the residence of a witness. It requires the person serving process to annotate certain information on the document after service. In cases in which the only address for the person to be served is a private mailbox, it allows service on the person in charge of the private mailbox if it is verified that the receiver maintains a private mailbox at that location.

Section 2 amends s. 48.081, F.S., relating to service on corporations. If service cannot be made on a corporation’s registered agent because of a failure to comply with s. 48.091, F.S., it allows service on any employee of the corporation only at the principal place of business or upon any employee of the registered agent. The section also allows service in accordance with s. 48.031, F.S., if the address for a corporation’s registered agent, officer, director, or place of business is a residence or a private mailbox.

Section 3 broadens the language of s. 48.21, F.S., to refer to “the person who effects service of process” rather than only “officers to whom process is directed.” It also revises the section to require notation of the date of receipt and service and to refer to “service” rather than “execution” of process.

Section 4 deletes s. 48.29(6)(a), F.S., to eliminate the requirement for certified process servers to annotate certain information on the face of the original and any served copies of the process.

Section 5 amends s. 83.13, F.S., relating to levy of distress writs in non-residential tenancy cases, to make the party who had the writ issued responsible for delivering the writ to the appropriate county sheriff when the property has been removed from the county where the writ was issued.

Section 6 creates an effective date of July 1, 2004.

This CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 48.031, 48.081, 48.21, 48.29 and 83.13.

## **II. Present Situation:**

Section 48.031(3)(a), F.S., provides that service of witness subpoenas in civil or criminal cases is to be made in the same manner as is provided for service of original process. Section 48.031(1), F.S., requires that original process be served by delivering a copy to the person to be served or by leaving copies at his or her usual place of abode with any person who resides there and is at least 15 years of age. The person with whom the process is left must also be informed of its contents. In addition to these methods of service, service of a witness subpoena in a criminal traffic case, misdemeanor case, or second or third degree felony case may be made by certified mail to the witness at his or her last known address, if the subpoena is mailed at least seven days before the date of appearance.

Section 48.081, F.S., concerns service of process on corporations except insurance companies. Service on domestic or foreign private corporations may be made on specified officers, directors, or business agents. If a foreign corporation has none of the specified persons in the state, service may be made on any agent transacting business for it in the state. Alternatively, service on any corporation may be made on a registered agent who is designated and keeps regular office hours pursuant to s. 48.091, F.S.

Section 48.21, F.S., requires an officer to whom process is directed to make certain notations on the process or on a return-of-service form attached to the process. It also provides the court with discretion to impose a fine of no more than \$10 if the required annotations are not made.

Section 48.29, F.S., provides the chief judge of each judicial circuit with authority to establish a list of certified process servers who may serve initial, non-enforceable civil process. The section also provides qualifications and requirements for certified process servers, including a requirement to make certain notations on the face of any process that is served.

In non-residential tenancy cases, s. 83.12, F.S., provides for issuance of a distress writ. A distress writ prohibits removal of certain property from real property that is subject to distress for rent or advances. It also provides for levy on the property according to the writ and further court order. Section 83.13, F.S., provides that the county sheriff is responsible for service of distress writs. If the property subject to the writ is in another county, the sheriff is required to deliver the writ to the other county's sheriff.

### III. Effect of Proposed Changes:

**Section 1** of the CS amends s. 48.031(3), F.S., to allow service of witness subpoenas by any form of United States mail, rather than permitting mail service only by certified mail. Failure of a witness to appear in response to a subpoena that is not certified may not be the basis for a finding of contempt of court. This section also creates s. 48.031(3)(b), F.S., to provide that a witness subpoena in a criminal case may be posted after three service attempts have been made at the witness's residence at different times of the day or night on different dates, as long as this is done at least five days prior to the witness's required appearance. However, the new section does not specify the method or place of posting.

Attorneys are not likely to use service by regular mail or by posting to subpoena critical witnesses in significant cases. The failure of a witness to appear may be cause for the judge to continue a trial, or the party may be forced to proceed without the witness' testimony. *See Martinez v. State*, 799 So.2d 313 (Fla. 2d Dist. 2001).

Failure of a witness to appear pursuant to a witness subpoena may also be cause for the court to hold the witness in contempt, and the court may place a witness in jail as punishment for contempt. However, the CS provides that a witness may not be held in contempt of court for failing to appear in response to a subpoena that is served by United States mail that is not certified. For subpoenas served by certified mail, there is a rebuttable presumption that mail properly addressed, stamped and mailed was received by the addressee. *Brown v. Giffen Industr., Inc.*, 281 So.2d 897, 900 (Fla.1973). Whether this presumption is overcome by testimony that the mail was not in fact received is an evidentiary decision that must be made by the judge after weighing the evidence. Clearly, it is more likely that a judge would reject such testimony if there was evidence that the witness had signed for a subpoena sent by certified mail. Similarly, the judge must consider the possibility that a posted subpoena was removed by someone other than the witness if the witness testifies that he or she did not receive the subpoena.

Section 1 also creates s. 48.031(5), F.S., to require the person serving process to put the date and time served, and his or her initials and identification number on the copy that is served. Section 48.031(6), F.S., is created to allow service on the person in charge of a private mailbox if the only address for the person to be served is a private mailbox, and it is verified that the person maintains a private mailbox at that location.

**Section 2** amends s. 48.081(3)(a), F.S., relating to service on corporations. If service cannot be made on a corporation's registered agent because of a failure to comply with s. 48.091, F.S., it allows service on any employee of the corporation only at the principal place of business or upon any employee of the registered agent. The section also creates s. 48.081(3)(b), F.S., to allow service in accordance with s. 48.031, F.S., if the address for a corporation's registered agent, officer, director, or place of business is a residence or a private mailbox. The effect of the section is to give greater flexibility for service of process on corporations when the corporation's registered agent cannot be served or the corporation does not have a physical address.

**Section 3** broadens the language of s. 48.21, F.S., to refer to "the person who effects service of process" rather than only "officers to whom process is directed." It refers to "service" rather than "execution" of process, and requires the use of a return-of-service form and notation of both date

and time of receipt and service. This amendment will make the information included in a return-of-service uniform regardless of whether the process is served by a sheriff's deputy, a certified process server, or another person appointed by the court.

**Section 4** deletes s. 48.29(6)(a), F.S., to eliminate the requirement for certified process servers to annotate certain information on the face of the original and any served copies of the process. Certified process servers would be required to make annotations pursuant to s. 48.21, F.S., which is to be amended by Section 3 of the bill.

**Section 5** amends s. 83.13, F.S., to provide that the party who sought a distress writ is responsible for delivering it to the sheriff of the appropriate county if the property that is subject to levy is found in another county. This relieves the sheriff of the county where the writ was issued from responsibility for transmitting the writ.

**Section 6** makes the provisions of the CS effective on July 1, 2004.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Mailing a certified letter currently costs \$1.93 more than sending a letter by regular mail. The impact of permitting service by regular mail appears to be insignificant for individual litigants, but there may be beneficial savings for commercial litigants who process a significant volume of routine cases. Similarly, the change in the responsibility for delivery of distress writs will probably not result in significant financial impact to individual litigants.

C. Government Sector Impact:

The use of regular mail to serve subpoenas should result in savings to the government. However, the amount of such savings cannot be determined because it is not clear how

often service by regular mail will be used or whether there will be any impact upon the appearance of witnesses or the holding of contempt proceedings.

It is not anticipated that there will be a significant financial impact as the result of relieving the county sheriff from responsibility for delivering distress writs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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